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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ANTONIO GARCIA-CHAVEZ,

14 Defendant.

Case No. 2:08-cr-00239-LDG (PAL)  
Case No. 2:13-cv-01714-LDG

**ORDER**

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16 The defendant, Antonio Garcia-Chavez, has filed a motion under 28 U.S.C. §2255 to  
17 vacate, set aside, or correct sentence by a person in federal custody (#72), and an  
18 application for appointment of counsel (#73). The Court has determined, for several  
19 reasons, that the defendant is not entitled to any relief and the §2255 motion must be  
20 dismissed. First, the motion is untimely. The defendant was sentenced June 26, 2009,  
21 and did not appeal. He filed the instant motion on September 18, 2013, and does not  
22 provide a legitimate reason for failing to file the motion within the requisite one-year period.  
23 See 28 U.S.C. §2255(f). Second, except for the signature and date, the motion is a  
24 photocopy of a §2255 motion that defendant filed in August 2010. The Court denied that  
25 first motion on the merits, and the defendant did not appeal that ruling. Third, although the  
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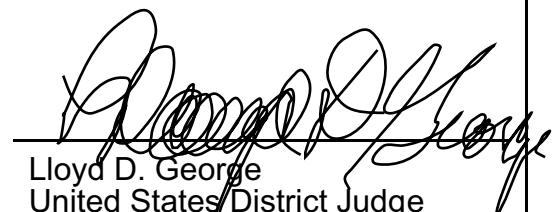
1 instant motion is the defendant's second §2255 motion, he has not obtained the requisite  
2 certification of the court of appeals. See 28 U.S.C. §2255(h). Therefore,

3           **THE COURT ORDERS** that Defendant's Motion Under 28 U.S.C. §2255 to vacate,  
4 set aside, or correct sentence by a person in federal custody (#72) is DENIED;

5           **THE COURT FURTHER ORDERS** that Defendant's Motion for Appointment of  
6 Counsel (#73) is DENIED;

7           **THE COURT FURTHER DENIES** a Certificate of Appealability for the above stated  
8 reasons.

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10           DATED this 8 day of April, 2014.

  
11           Lloyd D. George  
12           United States District Judge

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